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AUTHOR Bruwelheide, Janis H.
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ABSTRACT

This digest focuses on a variety of issues confronting copyright law in the digital age. The current copyright law was adopted in 1976, and could not possibly have foreseen so many new technologies. However, it did attempt to cover all bases by using language which was intended to be somewhat elastic. A current report by the U.S. Department of Commerce, the "green report," has set forth some preliminary recommendations for dealing with digital information; the final report, the "white report," may result in proposed legislative changes to the copyright law. Areas in the report of special interest to educators and librarians include the discussion of the definition of multimedia, the right of "transmission," and library exemptions. Seven questions and answers concerning existing copyright law address copyright owner rights, fair use, "classroom exemption," lack of copyright and public domain, library scanning of reserve works into a database, and circulation of computer software. (Contains 11 references.) (MAS)

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# Copyright Issues for the Electronic Age

by Janis Bruwelheide

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ERIC

ERIC Clearinghouse on Information & Technology
Syracuse University
4-194 Center for Science & Technology
Syracuse, New York 13244-4100
Phone: (315) 443-3640 • Toll-free: (800) 464-9107
Fax: (315) 443-5448 • Internet: eric@ericir.syr.edu

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# Copyright Issues for the Electronic Age

by Janis H. Bruwelheide

In the 1990s, the term "digital age" is commonplace. Computers allow us to translate text and visual information into digital format and give us the ability to create and share new information seamlessly. This Digest will focus on a variety of issues confronting copyright law in the digital age.

## Current Copyright Law

Because information is now so freely available, particularly in electronic form, does that mean we are free to use that information in any way we want? Current copyright law was adopted in 1976 and went into effect in 1978. It is difficult to imagine how the authors of the 1976 Copyright Act could have foreseen so many new technologies. However, they did attempt to cover all of the bases by using language which was intended to be somewhat elastic in Section 102 (a) of the law:

> *Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.*

## Possible Legislative Changes

A current report by the U.S. Department of Commerce, commonly referred to as the "green report," has set forth some preliminary recommendations for dealing with digital information. The "green report" was published in July, 1994, and hearings were held in the fall of 1994. A final report, the "white report," expected in May, 1995, may result in proposed legislative changes to the Copyright Law.

Several areas of special interest to educators are included in the report. One is the discussion of a definition of multimedia. The report has suggested that "mixed" or "multiple" media is a more accurate term, and better describes the variety of rights which need to be acquired. A second area being addressed is "transmission." An additional right of transmission may be added to the existing rights of copyright owners. The terms "transmit" and "transmission" may be added to existing definitions in section 106, rights of copyright owners. Section 106 (3) might be modified to include distribution "by transmission." The definition of "transmit" may be expanded to include reproductions of a work as well as performances and displays. In addition to proposed changes in Section 106, the definition of "publication" may be expanded to include "by transmission" in addition to physical copies.

Another area needing clarification according to the "green report" is section 108 of the Law which addresses library exemptions. For example, the legal implications of "browsing" through electronic documents, scanning, uploading, and document transfer may be of concern to copyright holders. The American Association of Publishers has issued a strong statement against digitizing without licensing. Professional organizations such as the American Library Association and the Association of Research Libraries have taken a strong pro user stance.

Until guidelines and clarification are developed for digital information, it would be prudent to be cautious—especially about digitizing. However, educators must also realize that there are exemptions provided in the existing law which should be exercised.

## Question & Answers About Existing Copyright Law

**Q: What is copyright?**

A: Copyright is a statutory privilege extended to creators of works fixed in a tangible medium of expression.

**Q: What are the rights of a copyright owner?**

A: Copyright involves five separate rights (section 106):

1. The right to reproduce or copy the work;
2. The right to prepare derivative works;
3. The right to distribute copies of the work to the public;
4. In the case of audiovisual works, the right to perform the work publicly;
5. In the case of literary, musical, dramatic and choreographic works, pantomimes and pictorial, graphic or sculptural works, the right to display the work publicly.

These exclusive rights may be transferred by the copyright owner as individual rights or as a "bundle of rights."

**Q: What is meant by fair use (section 107)?**

A: Four factors are to be considered in determining whether or not a particular use of a copyrighted work is fair:

1. Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. Nature of the copyrighted work;
3. Amount and substantiality of the portion used in relation to the work as a whole; and

4. Effect of the use upon potential market for or value of the work.

**Q: What is meant by the "classroom exemption?"**

A: This exemption (section 110) refers to performance or display of copyrighted works in a classroom setting. The language in the law reads:

> *. . . performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made . . . and that the person responsible for the performance knew or had reason to believe it was not lawfully made . . . (is not an infringement).*

**Q: Is a work without a copyright notice considered to be in the public domain?**

A: No, not if it was published after March 1, 1989. There is a lack of awareness among educators concerning an important change for copyright notice which occurred at that time. As of March 1, 1989, placement of a copyright notice on works became optional when the U.S. joined the Berne Convention. Placement of notice is certainly recommended; it is very difficult to locate a copyright owner when the notice is absent. However, just because the notice is absent, we cannot assume that anything published since March 1, 1989 is in the public domain unless specifically told so. Now we assume, unless the works are specifically in the public domain or meet a few other criteria, that a work is copyrighted when it is fixed in a tangible medium. Of course, this includes postings on electronic bulletin boards, Internet messages, etc. unless told it may be reposted.

**Q: May a library scan and store its reserve works into a database to reproduce copies on demand or store them on a network for students to access electronically?**

A: Not in all cases. If approval is obtained, original works by instructors such as syllabi, sample tests, etc. could be scanned and stored. However, course readings could not be stored without permission, licensing, or royalty fees.

**Q: May a library circulate computer software to patrons?**

A: Yes. However, as of 1990, the following notice must be permanently attached to the disk or permanent packaging for the software (notice the length!):

> ***Notice:** Warning of Copyright Restrictions—The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material. Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs or displays the computer program, except as permitted by title 17 of the United States code, may be liable for copyright infringement. This institution reserves the right to refuse to fulfill a loan request if, in its judgment, fulfillment of the request would lead to violation of the copyright law.*

This notice must be attached by means of a label in permanent fashion to the disk(s) or the box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the program. A font size must be used which is legible, comprehensible, and readily apparent to the user of the program.

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This ERIC Digest was prepared by Janis H. Bruwelheide, Ed.D., Associate Professor, College of Education, Health, and Human Development, Montana State University-Boseman.



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